



**Responsiveness Summary**  
**for the**  
**Northern Portion of the**  
**Former Scott Paper Mill Site**  
**Anacortes, Washington**

**Consent Decree**

**February 2003**

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## Introduction

Between December 23, 2002, and January 21, 2003, the Washington State Department of Ecology (Ecology) invited public comment on a draft Consent Decree for the northern portion of the former Scott Paper Mill site in Anacortes, Washington. The northern portion includes currently-owned Port of Anacortes property, as well as property owned by Shared Healthcare Systems, Inc. Ecology and the Port of Anacortes negotiated this draft Consent Decree pursuant to the provisions of the Model Toxics Control Act (MTCA), Washington State's cleanup law. The draft decree generally calls for investigation of the uplands and the sediments associated with the northern portion of the site. Information from the investigation will allow Ecology to make appropriate decisions about site cleanup.

The southern portion of the site, owned by MJB Properties, Inc. since 1989, will be covered under a separate legal agreement that is currently being discussed between Ecology and the Kimberly-Clark Corporation (a successor to Scott Paper Company). This document, called an Agreed Order, is also being discussed pursuant to the MTCA.

Public involvement activities related to this public comment period included:

- Distribution of a fact sheet describing the site and draft Consent Decree and Public Participation Plan through a mailing to approximately 525 people, including residents, neighboring businesses, and other interested parties;
- Publication of a paid display ad in the *Anacortes American* on December 24, 2002;
- Publication of a paid display ad in the *Skagit Valley Herald* on December 23, 2002;
- Publication of notice in the Washington State Site Register, dated December 24, 2002, and January 7, 2003;
- Posting of the draft Consent Decree and Public Participation Plan on the Washington State Department of Ecology (Ecology) web site;
- Providing copies of the draft Consent Decree and Public Participation Plan through information repositories at Ecology's Northwest Regional Office and the Municipal Building (City Hall--the temporary Anacortes location while the library was being moved); and
- Holding of a public meeting on January 7, 2003, at the Municipal Building in Anacortes.

The public was given an opportunity to comment on the draft Consent Decree. Eight comments were received concerning: early and frequent public involvement; cleanup of Seafarers' Memorial Park; soil, groundwater, sediment, intertidal, and subtidal contamination; Ecology and Port of Anacortes responsibilities; transparency in the cleanup process; wood waste and other contaminants; cleanup schedules and prioritization of cleanup work; site boundaries; coordination between cleanup of portions of the site and different media; placement of contaminated soils once the cleanup is underway; habitat restoration; and future use/development.

Based on the public comment, no changes to the Consent Decree were made. The final consent decree between Ecology and the Port of Anacortes will be filed in Skagit County Superior Court in the near future. Work on the Remedial Investigation for soils and groundwater on the uplands (Parcels 1, 2, and 3) and the marine area is expected to begin in March 2003. It is expected that

remedial actions on the southern portion of the Former Scott Paper Mill will also commence during the spring of 2003. The public will continue to be notified of future activities at this site and will be provided with other opportunities to comment.

## Background

The Scott Paper Company and other former owners operated lumber mills and a pulp mill from approximately 1925 until 1978. During this period, numerous buildings, sheds, piers, tailings ponds, boilers, fuel storage tanks, a smokestack and burners were located on the northern portion of the site. The pulp producing plant was located on the southern portion of the mill site.

In 1978 and 1979, the Port of Anacortes purchased the northern portion of the former mill site from the Scott Paper Company. This property included marine tidelands. The Port of Anacortes used part of the upland property as a log yard from 1991 to 1993. In 1998, the uplands of this northern portion were replatted into what are currently referred to as Parcels 1, 2, and 3:

- Parcel 1 is the vacant lot along Q Avenue;
- Parcel 2 was sold to Shared Healthcare Systems, Inc. in 1998; and
- Parcel 3 was dedicated as Seafarers' Memorial Park.

In 1999, the Port of Anacortes and Shared Healthcare Systems, Inc., conducted an independent cleanup action in Parcel 2 for the soils in the area of the former aboveground fuel storage tanks and tailings ponds for the pulp mill. The cleanup included the removal of petroleum-contaminated soil and wood debris. The independent cleanup action also included installation of a two-foot thick soil cover and storm water controls for the remainder of Parcel 2.

In 2000, Ecology notified the following that they are potentially liable persons for the entire former Scott Paper Mill site: Port of Anacortes, Kimberly-Clark Corporation, Shared Healthcare Systems, Inc., and MJB Properties, Inc.

Remaining contaminants of concern to be investigated in the area of the site covered under this Consent Decree include: petroleum; carcinogenic polynuclear aromatic hydrocarbons (cPAHs); dioxins/furans; metals; polychlorinated biphenyls (PCBs); and deleterious substances (e.g., wood), brick, metal, and slag in the marine environment.

The proposed actions conducted under this Consent Decree will be done in conjunction with remedial actions under a separate legal agreement for the southern portion of the site. The Consent Decree for the northern portion of the site includes:

- Completion of a Remedial Investigation for soils and groundwater on the uplands (Parcels 1, 2, and 3) and the marine area;
- Development of a Feasibility Study for soils and groundwater on the uplands (Parcels 1, 2, and 3) and the marine area; and
- If necessary, for Parcel 1 only, preparation of a Cleanup Action Plan and completion of remedial actions for soil.

The Consent Decree may be amended to cover additional actions for Parcels 1, 2, and 3, as well as the marine area.

## Comments Received and Ecology Responses

**Ross O. Barnes, Ph.D., Rosario Geoscience Associates:**

- 1.a. **Cleanup of contaminants in Seafarers' Park and intertidal and subtidal habitats:** "I am concerned and troubled that the draft consent decree does not contain an agreement to cleanup contaminants--including "other deleterious substances"--that are located on the portions of the site where their presence is generally recognized to pose the most actual and current risk to the public health and safety and to the environment. These portions of the site include (1) the presently active public park located in Parcel 3 and the "Marine Area", and (2) the intertidal and subtidal habitats of the "Marine Area" where such habitats are directly exposed to the degradation effects of site contamination."

*Response: This draft Consent Decree (CD) is for completion of a Remedial Investigation/Feasibility Study (RI/FS) at the northern portion of the former Scott Paper Mill site, which includes Seafarers' Memorial Park and the associated marine areas owned by the Port of Anacortes (Port). The RI/FS requires a detailed investigation and evaluation of the lateral and vertical extent of contamination, including deleterious substances such as wood waste. A RI/FS must be conducted prior to preparing a Cleanup Action Plan (CAP). The Remedial Investigation (RI) will provide Ecology with information necessary to make judgments regarding the nature and extent of contamination. The Feasibility Study (FS) allows Ecology to review and evaluate different methods and technologies for cleanup. The selection of an uplands CAP, or marine area CAP including the intertidal and subtidal zones, follows after the respective RI/FS is completed. Although Ecology believes that a CAP does not need to be included in this CD, Ecology will require a CAP if the RI/FS identifies contaminants that pose a hazard to human health and the environment. To facilitate a CAP, this CD can be amended to include a CAP. Alternately, an Agreed Order or another CD can be prepared for conducting a CAP. In addition, Ecology has the authority under the MTCA to issue an enforcement order to conduct a CAP to potentially liable persons (PLPs) that choose not to address contaminant threats identified in the RI/FS.*

- 1.b. **Responsibilities of the Port of Anacortes and Ecology:** "I do not believe that the current draft decree adequately addresses the defined

responsibilities of either the Port of Anacortes or the Department of Ecology to protect the public health and safety and the environment and habitats of the state, and specifically the responsibilities of DOE [Ecology] defined under the Model Toxics Control Act.

At least twice previously, members of the Anacortes community formally asked the Department of Ecology to require timely cleanup of toxic contaminants most directly affecting the public health and safety and the environment at the former Scott Paper Mill site. Both times, the response of the DOE was, in the judgement of many, scientifically incredible and unresponsive to the responsibilities of the DOE as defined in state law.

The public meeting held on January 7 [2003] and the responses to this request for comment indicate that the size of the “concerned many” in this community and elsewhere is growing rapidly. Will this consent decree be yet one more time that the Department of Ecology fails to meet its responsibilities as defined by law?”

*Response: Ecology disagrees with this comment. While there does not appear to be any substantiated relationship between this CD and the two prior episodes where Ecology allegedly was “scientifically incredible and unresponsive,” the commenter should understand that this particular CD is not designed to implement site cleanup activities (except, perhaps with Parcel 1 soils). This CD is, however, likely to facilitate cleanup activities in the near future. As the previous response states, the site must first be investigated so that sufficient information is gathered to select an appropriate cleanup for the site. Ecology stated at the January 7, 2003, public meeting that the agency is working with the public, the Port and the other PLPs, and other government agencies to address the remainder of the site as defined under MTCA. This draft CD is merely the first action-- with one PLP-- in a process that will ensure site cleanup by the PLPs.*

*As discussed above, this decree is entered into by Ecology under the provisions of the MTCA, specifically RCW 70.105D.040(4)(a). The decree is one of the mechanisms Ecology is empowered to use for site investigation and restoration under MTCA. Therefore, contrary to the comment, Ecology is fulfilling its MTCA responsibilities by entering into this decree.*

*With regard to your comments about the previous situation several years ago, Ecology’s Toxics Cleanup Program (TCP) is the department within Ecology that takes the principal lead in enforcing MTCA. It appears that prior communications with Ecology were not with TCP and therefore no comment can be made on the appropriateness of, or lack of, responses that occurred without further information.*

*Ecology's TCP acknowledges the public interest in and concern for this site and has actively sought public comment. For example, the January 7, 2003, meeting was not required by law. Ecology will continue to meet or exceed MTCA public involvement requirements, including multiple opportunities for the public to comment about actions at this site, including the draft RI/FSSs that will be developed under this draft CD.*

- 1.c. **1995 Water Quality Certification and Ecology responsibilities:** "The last formal request to the DOE from this community for scientifically credible investigation and cleanup of the areas of the site most directly hazardous to the public health and safety was during the Water Quality Certification for the Corps of Engineers permit for construction of Seafarers' Memorial Park in 1995. A review of comments made at that time to the DOE, suggests that those comments adequately stated the general nature of the actual and potential concerns and problems about toxic contamination from deleterious substances at the site, and that those concerns are as equally relevant to Model Toxics Control Act responsibilities as to Clean Water Act responsibilities, if not more so!

I wish to place on this public comment record, the most comprehensive of the 1995 Clean Water Act comments, namely the comments, concerns and documentation from Evergreen Islands as sent to the DOE on January 23, 1995. A copy of the 1995 letter is attached to this fax transmission [*the comment was sent to Ecology by facsimile and is not included in this Responsiveness Summary*]. The documentation attached to that letter is extensive and will be sent by mail.

I also note and attach in the mailed documentation, the DOE Water Quality Certification order #94-2-02117 defining Port of Anacortes liability for future cleanup of the Marine Area and the public Park within Parcel 3 (Attachment "F" [*not included in this Responsiveness Summary*]).

I also attach in the mailed documentation correspondence from a City Councilor regarding the general recognition in the community that cleanup of the Marine Area and shoreline should be required through any means available (Attachment "G" [*not included in this Responsiveness Summary*]). I believe that the Model Toxics Control Act may be just that best means available."

*Response: MTCA is a broad based statute that was passed as a public initiative in 1988 and became effective in 1989. The provisions of MTCA incorporate all applicable local, state and federal laws, including the Clean Water Act, when a cleanup is necessary to protect human health and the environment.*

*The CD requires the Port to comply with other applicable laws. Please refer to Section 20 of the decree. Ecology concurs in your comment that MTCA is the law that is “best” for addressing contamination at this site, although there is no specific reference to MTCA in the prior communications that were supplied with your comments. MTCA is the law which addresses contaminated sites. Your comments are acknowledged and will be addressed as the issues are investigated and remedies are selected.*

*The March 9, 1995, “State Response to the Public Notice 94-2-02117,” from Ecology’s Environmental Review Sediment Management Section, Olympia, WA., to the U.S. Corps of Engineers (Corps) regarding the Port’s proposed in-water work states that “Nothing in this certification shall absolve the Port of Anacortes from future liability if conditions arising at the site indicate that clean up is required.” There is no indication that Ecology ignored public concerns regarding contamination when the Port conducted the permitted construction activities at Seafarers’ Memorial Park. The State response clearly states a condition of the Corps permit is that the Port retains the liability and responsibility to conduct cleanup contaminants as the needs arise during construction.*

*Also, Ecology’s TCP in the Northwest Regional Office (NWRO), Bellevue, Washington, has acted upon the public concerns since this 1995 permit was issued by the Corps. TCP files indicate that 1996 discussions with the Port provided Ecology’s TCP with enough knowledge to list the property in January of 1997 on its Confirmed and Suspected Contaminated Sites reports. Ecology believes that this listing facilitated the independent cleanup of soils on Parcel 2 through TCP’s Voluntary Cleanup Program (VCP) in 1999, because Shared Healthcare Systems, Inc. was aware of Ecology’s concerns when purchasing the property from the Port. As a direct result of that cleanup work, TCP named PLPs for the entire site and has been negotiating since 2000 with the Port for this draft CD. Since 2002, negotiations also have been conducted with MJB Properties, Inc., and Kimberly-Clark Corporation for an agreed order on the southern portion of the former Scott Paper Mill property.*

**Tom Glade, Evergreen Islands:**

- 2.a. **Statement of facts—contaminants:** The Statement of Facts documents an extensive number of studies and reports that document the widespread pollution of this site. The pollutants included metals (arsenic, lead, chromium, mercury), resin acids, petroleum hydrocarbons (diesel, tar, benzene, toluene, ethyl benzene, xylene), carcinogens (dioxin, furan isomers, carcinogenic hydrocarbons,



polychlorinated biphenyls), and hydrogen sulfide. The one study cited that was in sub tidal areas indicated that dioxin, furan congenors, and methylphenol were above acceptable levels.”

*Response: Yes, there are a number of documents that discuss contamination issues on the northern portion of the former Scott Paper Mill, as well as other portions of the site. Many of the specific investigations and studies for the northern portion of the former mill property were contracted by the Port prior to Ecology’s involvement with the site. When Ecology TCP began active investigation of the site in 1996, many of these reports were provided to Ecology as information required under MTCA. In addition, several reports were prepared as a result of Ecology’s request for further action during the independent cleanup within VCP. For example, recent sampling for dioxin/furans was conducted by EarthTech, Inc., on behalf of the Port, at Ecology’s request. Note that additional sampling will likely be required to complete the RI/FS to further define areas of concern covered by this CD.*

- 2.b. **Work to be performed—cleanup priorities:** “The primary intent of the Consent Decree is to facilitate the development of Parcel 1, the land furthest upland and the land with probably the least pollution. This priority contradicts the state legislature’s priority to address the “sites posing the highest risk to human health and the environment.” The Washington Administrative Code for the Biennial Program Report, WAC 173-340-340(1), states (emphasis added):

“Before November 1 of each even-numbered year, the department shall prepare a biennial program report for the legislature containing its plan for conducting remedial actions for the following two fiscal years. This report shall identify the projects and expenditures recommended for appropriation from both the state and local toxics control accounts. *In determining which sites the department shall consider for planned action, emphasis shall be given to sites posing the highest risk to human health and the environment*, as indicated by a site's hazard ranking. The department may also consider other factors in setting site priorities. After legislative action and any revisions, this report shall become the department's biennial program plan.”

On January 3, 2003, The Seattle Times article (see attachment [not included in this Responsiveness Summary]), entitled “Prime lands get toxic cleanup”, stated:

“The state has historically cleaned up the most-contaminated sites first, but now real-estate developments are "aggressively competing" for public money, said Jim Pendowski, the Department of Ecology's toxic-cleanup manager.”

Evergreen Islands and its members prefer that public money be given to sites posing the highest risk to human health and the environment.”

*Response: Ecology believes that the entire former Scott Paper Mill site is a priority and that this decree and subsequent actions will ensure that the site is fully addressed. Parcel 1 is only one part of the investigation and cleanup of the site. Ecology is working with all PLPs at this site to address all contaminant issues in an efficient and timely manner. Ecology also believes that this site has a high enough priority that ranking was not necessary to proceed with a draft CD. Site ranking for the Hazardous Sites List publication utilizes State resources that would not be beneficial given that the Port has voluntarily agreed to negotiate this draft CD. Although a goal of the Port's in this draft CD is to accelerate Parcel 1 cleanup, that does not mean the rest of the site will not be addressed. Ecology's responsibility is to investigate and clean up the entire site. The actions at Parcel 1 are only the first step in that process. While Ecology does assist development in providing funding to public agencies to support local communities, it does not establish cleanup priorities based upon private financial goals and has not done so at this site. The CD calls for other site tasks to commence at the same time as the Parcel 1 tasks; those will continue until complete.*

*Furthermore, in a typical cleanup scenario, the uphill/upgradient (surface water/groundwater) locations would be cleaned up first because of the potential for downhill/downgradient properties to be re-contaminated. At this site, Parcel 1 is the uphill/upgradient property and Ecology needs to make cleanup of Parcel 1 a priority if there is any potential for re-contamination of Parcels 2 and 3. Also, since Ecology needs to have groundwater samples from 'clean' native groundwater as it enters the Port's property from upgradient (west) to formulate a baseline for naturally occurring chemicals, soil cleanup and groundwater monitoring activity needs to be performed in conjunction with other activities.*

*Ecology acknowledges that the schedule for soil cleanup at Parcel 1 was motivated by the Port's development plans. However, as discussed above, that goal is not inconsistent with site investigation and remediation.*

- 2.c. **Work to be performed—edits:** “All occurrences of the verb “will” must be changed to the verb “shall”. CAP, the acronym for Cleanup

Action Plan, is not clearly defined.”

*Response: The words “will” and “shall” have the same meaning and, thus, no change is necessary. The acronym “CAP” is defined in the document where it is first used (Part V., Statement of Fact, item 12, p.9).*

- 2.d. **Work to be performed—schedule:** “The descriptions of Task 1 do not specify the time frames for completing the Uplands Area RI/FS Report and for implementing the Uplands Area Work Plan. Also the descriptions of Task 2 do not specify the time frames for completing the Marine Area RI/FS Report or for implementing the Marine Area Work Plan. After the Decree is formalized and Parcel 1 is cleaned up, what clout will Ecology have to assure that the Marine Area will be cleaned up in a timely fashion (if ever) if a time frame is not specified?

For high priority sites, the Washington Administrative Code regarding Deadlines, WAC 173-340-140, states:

(6) Remedial investigation/feasibility study. For all sites designated as a high priority, the remedial investigation/feasibility study shall be completed under WAC 173-340-350 *within eighteen months* of signing the order or decree. The department may extend the deadline up to twelve months if the circumstances at the site merit a longer time frame. The department shall provide the public an opportunity to comment on any extension. The department shall initiate a remedial investigation/feasibility study on at least ten sites per fiscal year.

(7) Cleanup action. The department shall select the cleanup action under WAC 173-340-360 and file a consent decree or issue an order for cleanup action for all designated high priority sites *within six months* of the completion of the remedial investigation/feasibility study. The department may extend the deadline for up to four months for consent decree and order discussions. The department shall provide the public with an opportunity to comment on any deadline extension.”

*Response: The schedule for completion of the Work Plans and RI/FSs is provided in Exhibit D of the draft CD and, therefore, time frames are not necessary within the general description of each task in the body of the decree itself. Exhibits A-D are incorporated into the decree and are enforceable parts thereof. The scheduled time periods provided in Exhibit D comply with*

*WAC 173-340-140. In addition, the terms of the decree and the provisions of MTCA ensure that Ecology has sufficient authority to ensure the work in this decree, and work at the site in the future is carried out.*

- 2.e. **Work to be performed—Task 1:** “The statement, “Upon the filing of this decree, Ecology will reissue the NFA Letter (No Further Action) excluding the detailed discussion of groundwater requirements from the letter (for Parcel 2)” is arbitrary and capricious. Have studies proven that the groundwater for Parcel 2 is not polluted?”

The Decree states, “The Port wishes to expedite remedial actions at Parcel 1.” This statement contradicts the state legislature’s priority to address the “sites posing the highest risk to human health and the environment.”

While Task 1 states, “...the work plan will address the soils at Parcels 1 and 3 and groundwater on the entire Uplands Area”, Task 1a only requires the Port to submit a Soils R/FS Report for Parcel 1. The language for Task 1a and Task 3 insinuates that the Port will only have to cleanup the soils on Parcel 1 before beginning development. The Decree must clearly state the “bar” that the Port must “clear” in order to begin development of Parcel 1.”

*Response: The statement regarding the re-issuance of the NFA explains that the revised NFA will exclude **the detailed discussion** of groundwater requirements. However, it will not exclude the groundwater requirements of MTCA. Since the extent of potential groundwater contamination will be determined in the RI under this draft CD, Ecology agreed to remove only the details of the groundwater monitoring in the NFA as the decree provided a better mechanism for addressing groundwater monitoring. Thus, the groundwater monitoring details will be addressed more appropriately under the decree through further discussion on the work plan for this draft CD.*

*Ecology disagrees with the commenter that Ecology’s decision to re-issue a revised NFA and address groundwater monitoring through the decree is “arbitrary and capricious.” Ecology decided that the more appropriate mechanism to address groundwater monitoring is through the decree. The decree not only provides a more expansive mechanism for addressing groundwater monitoring, it is an enforceable document. A NFA under the voluntary cleanup program is a technical opinion rendered by Ecology and is not in itself a binding requirement. Because Ecology’s decision is based on these fully considered options, it is not “arbitrary and capricious.”*

*The statement “The Port wishes to expedite remedial actions at Parcel 1” is an expression of the Port’s goals, and did not influence Ecology’s decision to allow the Parcel 1 soils remedial activities to be scheduled in an expedited manner. As stated above (2.b. Response), the soils in Parcel 1 would typically be the first areas assessed and cleaned up to avoid re-contamination potential of other properties. Also, as stated above, Ecology’s priority is to clean up the entire site as efficiently and expeditiously as possible; Parcel 1 is just a small area of the multiple efforts that are progressing simultaneously on this priority site.*

*The draft CD only includes a CAP for the soils at Parcel 1. As stated at the January 7, 2003, public meeting and above (1.a. Response), there will likely be subsequent CAPs to address cleanup of the other areas of the site. MTCA does not prohibit development of contaminated property provided that there is no risk to human health and the environment once cleanup is complete at the site. Thus, the Port may be able to develop Parcel 1 after soil and groundwater is investigated and soil is cleaned up (if necessary). If contaminated groundwater is known to exist on Parcel 1 when development occurs, MTCA allows for institutional controls to protect human health and the environment (WAC 173-340-440). There also may be compliance monitoring of groundwater required under MTCA (WAC-173-340-410) for Parcel 1, that can occur before, during, or after use of the property. Since all requirements are clearly stated in MTCA, no further discussion of requirements was needed in the draft CD.*

- 2.f. **Work to be performed—Task 2:** “For Task 2, the Marine Area RI/FS will address only soils (the near shore sediments), but not groundwater. The Marine Area RI/FS should also address the groundwater pollution in this area.

The Marine Area “...includes those areas from the top of the bank of the Uplands Area eastward to the inner harbor line...” However, significant amounts of wood waste extend beyond the inner harbor line. Over a period of time, beach erosion has moved the inner harbor line further towards the west. The boundaries of the Marine Area should be extended further east in order to address the polluted sub tidal land.”

*Response: This draft CD represents a legal agreement with the Port to prepare a RI/FS of the marine areas on their property. All areas of the site that lie beyond the areas covered by this draft CD will be investigated by the PLPs. This will include marine areas beyond the Port’s inner harbor line. At this time, no areas have been excluded from the site, defined in MTCA as “...any site or area where a hazardous substance...has been deposited,*

*stored, disposed of, or placed, or otherwise come to be located” (WAC 173-340-200).*

*Potential groundwater contamination of the site will be completely investigated and evaluated, including groundwater contribution to sediments or marine waters in the marine areas. In this draft CD, the Port has agreed to conduct the necessary investigations of the northern portion of the former Scott Paper Mill site. This draft CD also has provisions for conducting the RI/FSs in conjunction with PLPs who have adjoining property to the south to ensure that credible uplands area-wide evaluation and cleanup is being performed.*

- 2.g. **Work to be performed—Task 3:** “Task 3 only requires a Soils Cleanup Action Plan (CAP) for Parcel 1. Task 3 must include a Groundwater CAP if the Uplands Area RI/FS indicate the need for a CAP.

Provisions for a Groundwater CAP for Parcel 2 must also be included, and both a Soils Cap and a Groundwater CAP must be included for Parcel 3. Provisions for both a Soils CAP and a Groundwater CAP must also be included for the Marine Area.”

*Response: As stated above (see Responses to 1.a. and 2.e. ), Ecology has determined that any required CAPs can be supplemental to this draft CD, being either added to this CD or under separate orders, CDs, or independent remedial actions. Ecology acknowledges that if CAPs are necessary to protect human health and the environment following the RI/FSs, there will be full compliance with MTCA. Again, Ecology emphasizes that the actions called for in this decree are only one step in the cleanup process. The commenter assumes that every action (RI, FS, draft CAP, final CAP) for site investigation and cleanup must be contained in this decree. That assumption is incorrect.*

- 2.h. **Summary of changes requested:** “In summary, Evergreen Islands requests the following changes be made to the Consent Agreement:
- i. “The “sites posing the highest risk to human health and the environment” must be given the highest priority for cleanup.”
  - ii. “Equal priorities for the both the Upland Area and the Marine Area Remedial Investigation/Feasibility Studies and Work Plans.”
  - iii. “The boundaries of the Marine Area should be extended further east in order to address the polluted sub tidal land.”

- iv. “Since Task 3 only requires a Soils Cleanup Action Plan (CAP) for Parcel 1, Task 3 must include a Groundwater CAP if the Uplands Area RI/FS indicate the need for a CAP.”
- v. “Provisions for a Groundwater CAP for Parcel 2 must also be included.”
- vi. “Provisions for both a Soils CAP and a Groundwater CAP must be included for Parcel 3.”
- vii. “Provisions for both a Soils CAP and a Groundwater CAP must also be included for the Marine Area.”
- viii. “Time frames must be set for completing the Uplands Area RI/FS Report and for implementing the Uplands Area Work Plan.”
- ix. “Time frames must be set for completing the Marine Area RI/FS Report or for implementing the Marine Area Work Plan.”
- x. “The boundaries of the Marine Area should be extended further eastward to address the polluted sub tidal land.”

*Response:* All of the items in the “Summary” have previously been addressed by Ecology, above.

**Loren Hoboy:**

- 3.a. **Future public comment opportunity:** “Since the scope of work is not defined by the Phase II Assessment as yet there should be a second public comment period after the data is gathered and a proposed remediation plan is proposed as final.”

*Response:* As stated in the Public Participation Plan for the site, a 30-day public comment period will be held for draft RI/FSs, for any draft CAPs that are developed for the site, as well as other key points during the investigation and cleanup process before final decisions are made.

- 3.b. **Transparency in the cleanup process:** “The Port has not shown good judgement in the past on environmental issues and the process should be subject to public review at each step.”

*Response:* Ecology maintains responsibility for public involvement at the site. It is

*understood that there is community concern about the cleanup process and how the public will be involved in this process. As described in the Public Participation Plan, the purpose of the plan is to promote public understanding and participation in the MTCA activities planned for this site. Ecology will use a variety of activities to facilitate public participation in the investigation and cleanup of this site. Ecology also will implement input provided by the community whenever possible.*

- 3.c. **Placement of contaminated soils:** “No dumping of soils from this site to the airport or other local location should be allowed without public comment!”

*Response: Ecology will hold 30-day public comment periods on any draft CAPs that are developed for the site. Should a CAP be developed for the site that includes local disposal of contaminated soils or sediments, you will have an opportunity to comment on this plan.*

**Pam Johnson, People for Puget Sound:**

- 4.a. **Early and frequent public involvement:** “The work required of the Port of Anacortes under this consent decree is very much an outline of a standard cleanup process under the Model Toxics Control Act. The documents that are developed to support the Remedial Investigation, Feasibility Studies, and Cleanup Action Plans will better indicate how protective of human health and the environment this cleanup will be. To that end, People For Puget Sound is very interested in having those documents available for us and other members of the public for review and comment before a draft RI/FS is presented to the public. Early participation and input from the surrounding community is necessary to ensure the final cleanup meets the needs of neighboring residents, and other stakeholders concerned about the health of Fidalgo Bay and surrounding waters. We would be willing to work with the Port and Ecology to come up with a workable process that includes this expanded document review. While Ecology has discretion in how many public meetings will be held during this process, People for Puget Sound strongly encourages Ecology to meet early and often with the community and stakeholders to build trust, encourage dialogue, and avoid misunderstandings that can get in the way of a smooth cleanup process.”

*Response: Ecology and the Port agree that community and stakeholder input are valuable in creating a lasting cleanup protective of human health and the environment. In the Public Participation Plan, Ecology identified key points where public comment periods will be held, including the draft Remedial Investigation/Feasibility Studies, any Cleanup Action Plans that*



*are developed for the site, and any other legal agreements for the site cleanup. Ecology may conduct additional outreach throughout the cleanup process to provide information to the community, invite public input, and seek valuable local input and knowledge.*

- 4.b. **Site boundaries:** “The consent decree sets predetermined boundaries for the site, even though the extent of contamination from the site has not been determined. Investigation of the soils and sediments should start on the old mill site, but should keep going until there is no evidence of potential contamination from this site. Air deposition from the smokestack and discharges into Fidalgo Bay certainly had the potential to contaminate beyond the current site boundaries. Ecology should order this investigation either through this consent decree, the agreed order with MJB/Kimberly Clark, or under separate order.”

*Response: The draft CD has predetermined boundaries, but the site does not (see 2.f. Response). Ecology intends to use the tools available to the agency under MTCA to evaluate the extent of contamination and, thus, investigate to the site boundaries. As previously pointed out (2.b. Response), the northern portion of the former mill site is a good place to start, and that situation did influence Ecology’s decision to negotiate this draft CD first.*

- 4.c. **Prioritization of cleanup work:** “Once extent of contamination is determined, Ecology must prioritize the areas with the most risk to human health and the environment, according to the Model Toxics Control Act. While we do not want to slow down the cleanup of Parcel 1, we also do not want to see resources taken away from the investigation and cleanup of sites where there may be higher levels of risk.”

*Response: The schedule in Exhibit D shows that the time frame for work on Parcel 1 and the remainder of the upland area on the northern portion of the former mill site will be overlapping. A work plan for the entire uplands of the northern portion of the former Scott Paper Mill property will be prepared as Task 1. Also, Ecology is planning that work in this draft CD will occur in conjunction with work under an Agreed Order at the southern portion of the former mill site. Work in the marine areas typically would not commence until the uplands are confirmed to be clean, or the contaminants are institutionally controlled, to avoid recontamination of the sediments.*

*Ecology has stressed that it is committed to cleaning up this site in the most efficient and expedient manner possible and the cleanup will be protective of human health and the environment. The investigation and cleanup of Parcel 1 will not detract from Ecology’s goal of investigating*

*and addressing the entire site; Parcel 1 is simply the first step towards that goal.*

- 4.d. **Cleanup plans:** “There is no requirement for cleanup under this consent decree, except for any necessary cleanup action at Parcel one. Ecology must ensure that full site cleanup will happen, even if the Port does not enter into an amended consent decree or new order to perform cleanup actions.”

*Response: Ecology is committed to investigating and addressing the entire site. Should the hypothetical situation arise that the commenter describes, Ecology will consider all options available under MTCA to ensure that the site is cleaned up.*

- 4.e. **Groundwater:** “Cleanup of groundwater must be included in all cleanup action plans, including Parcel 1.”

*Response: MTCA requires that groundwater confirmation and compliance monitoring be performed when groundwater contamination has been established. The uplands RI/FS will provide information regarding potential groundwater contamination and remediation at Parcel 1, as well as the northern and southern portions of the former mill site. Ecology prefers that the groundwater be addressed at the same time for the entire former mill site because it is the most efficient method. Groundwater cleanup will be addressed in CAPs as an amendment to this CD or by subsequent CDs or orders.*

#### **Jeanne Robinette, Skagit County Marine Resources Committee**

- 5.a. **Sediment cleanup:** “...The shores of Fidalgo Bay along the City of Anacortes waterfront have been altered and contaminated by historic development activity since at least 1895. Many of those impacts have yet to be remedied. Yet it is most difficult to mobilize cleanup. We therefore complement the DOE [Ecology] and the Port of Anacortes on the proposed work plan (Consent Decree) under which you have pledged to assure cleanup of this site, both shoreland and marine habitat, restoring the shoreline and nearshore habitat to an uncontaminated and wood debris-free environment. We recommend a related cleanup action involving sediment contamination beyond the inner harbor line as well.”

*Response: Ecology does expect the PLPs to evaluate the sediments beyond the inner harbor line (see Responses to 2.f. and 4.b.).*

- 5.b. **Habitat restoration:** “Skagit MRC [*Marine Resources Committee*] is especially interested in opportunities for restoration of west Fidalgo Bay shorelines to healthy and functional habitats. Our current focus is on shellfish habitat and possible contamination, Spartina removal, and identification of forage fish habitat along Fidalgo Bay and March Point shorelands. Once cleanup of contaminated sediments and excess wood debris at the Scott Site has been achieved, however, Skagit MRC may be in a position to provide some assistance in physical restoration of nearshore areas with volunteers and some modest level of funding. Please keep us informed if we can be of assistance.”

*Response:*        *Thank you for your offer. The Skagit County Marine Resources Committee will continue to be included when Ecology has information for public review regarding site cleanup and how cleanup may involve habitat restoration.*

**Wendy Steffensen, RE Sources**

- 6.a. **Early access to documents:** “The North Sound Baykeeper concurs with People for Puget Sound. The early access to documents used in the development of the draft RI/FS is very desirable. This access will greatly increase the usefulness of comments made from the public to the Department of Ecology, and will demonstrate the willingness of the Department of Ecology to work with the affected community and other concerned stakeholders.”

*Response:*        *Ecology is committed to working with the local community and stakeholders to create a lasting cleanup protective of human health and the environment. Documents will be made available at key points in the cleanup process. See Response to 4.a.*

- 6.b. **Prioritization of cleanup work:** “Within the Consent Decree, the following text is stated in Part 1, the introduction. "The mutual objective of the parties is to provide for remedial actions at a portion of the former Scott Paper Company mill site in Anacortes, Washington where there has been a release or threatened release of hazardous substances. Ecology has determined that the actions called for in this Decree are necessary to protect public health and the environment." Given this information, it appears that Ecology is working at cross-purposes to expedite the cleanup of Parcel 1, presumably the least-contaminated portion of the site. Given the stated intent of the Consent Decree, cleanup of the more-contaminated portions of the site should be given priority, since these portions are more likely to be the source of hazardous releases, and are more hazardous to

the public health and environment.”

*Response:* See Responses to 2.b. and 2.e.

- 6.c. **Coordination between cleanup of portions of the site:** “The Southern portion of the former Scott Paper Company mill site is not addressed by this Consent Decree, but will be addressed in a later Consent Decree. Because both the Northern and Southern portions of the site are contaminated by the same operation, are contiguous, and present a threat to the public health and environment, it is imperative that cleanup of the Southern site take place in conjunction with the Northern site. Piecemeal cleanup of separate areas of the site is not acceptable because of the likelihood of contamination from one area to another. Therefore, RE Sources urges the quick agreement to a Consent Decree between the owners of the Southern portion of the site and Ecology. If a Consent decree cannot be reached within a month, RE Sources asks that Ecology use its regulatory authority to protect public health and the environment, and make cleanup of the entire site mandatory.”

*Response:* Ecology is currently negotiating with Kimberly-Clark for the southern portion of the former mill site. It is not expected that those discussions will be prolonged. Ecology does not agree with the comment that a one-month limit be placed on negotiations. It is more important that Ecology and Kimberly-Clark take the time necessary to develop an Agreed Order that adequately addresses the southern portion and that properly meshes with the Port CD for the northern portion. The commenter should also understand that the investigation and cleanup of the site by the PLPs is mandatory. This decree and other agreements will implement the PLPs' mandatory activities under MTCA. Ecology has been clear with the PLPs that their efforts must be coordinated. Furthermore, the provisions of the decree ensure that the actions of the PLPs on the northern and southern portions will be coordinated. See Sections VI.B.1.c. and VI.B.12.b. See also Responses to 1.b. and 2.f.

- 6.d. **Coordination between cleanup of different media:** “Contamination from one media to another is also of concern in the present plan, since there is no provision that cleanup efforts will be coordinated, not only between the Northern and Southern portions, but among the Northern parcels, as well. While the RI/FS of the soils, groundwater, and the marine area are directed under the Consent Decree; for development purposes, only the cleanup of Parcel 1 soils will be expedited. A provision should be made that coordination of all of the RI/FS' be taken into account, and that the CAP for Parcel 1 soils, should be made with the consideration and full knowledge of groundwater contamination. Thus, the soils remaining in

place should not be subject to contamination from the groundwater, and the groundwater should not be subject to contamination from the soils. Unless this provision is made, the cleanup of Parcel 1 is a cleanup in name only, and only serves the interest of development. A cleanup method which uses capping of Parcel 1 to ensure that clean soils remain on top of the Parcel, does not satisfy the overall cleanup goal for the entire site, and should not be considered.”

*Response:* See Responses to 2.b., 2.e., and 2.f. Regarding a remedy for Parcel 1, no cleanup method has been selected for that part of the northern portion.

- 6.e. **Site boundaries:** “The boundaries of the site have been defined by Ecology in the definitions section of the Consent Decree. Until the Remedial Investigation has been completed, it is impossible to know where the boundaries of contamination from the site actually are. RE Sources asks that the site boundaries be expanded to include areas adjacent to the site boundaries with contaminants likely to be from the former Scott Paper Company mill site, which are above designated Sediment Management Standards.”

*Response:* See Responses to 2.f., 4.b., 4.e., and 6.c.

- 6.f. **Woody debris:** “RE Sources also asks that woody debris be addressed as a pollutant of concern.”

*Response:* Wood debris or waste is regulated as a “deleterious substance” under Washington State Sediment Management Standards (WAC 173-204), which is incorporated into MTCA (WAC 173-340-760). It will be evaluated in the RI/FS, and if it is determined that there is sufficient wood debris to have a detrimental affect on human health or the environment, cleanup will be required.

- 6.g. **Cleanup schedule:** “The only real provision for cleanup in this Consent Decree is for the expedited cleanup of soils in Parcel 1. No timeline exists for cleanup of any of the adjacent parcels or for the groundwater or marine area. This is not acceptable. A firm and reasonable timeline for cleanup of the entire site is needed. WAC 173-340-350 and WAC 173-340-360 give guidance on timelines for high priority sites. Since cleanup of Parcel 1 will be expedited, and is therefore a high priority, cleanup of the more contaminated portions of the site must also be addressed in a timely fashion. Cleanup should not exist merely to enable development.”

*Response:* See Responses to 2.b., 2.d., 2.e., 2.f., and 2.g.

**Brian R. Wetcher, Evergreen Islands**

- 7.a. **Wood waste:** “While we appreciate the concern exhibited by the DOE [*Ecology*] with the possible presence of highly toxic materials, such as PCBs, which may very well be onsite, we are disturbed that the primary and well acknowledged source of toxic contamination, nearly a century of wood waste accumulation underlying this site, has been largely ignored by the proposed consent decree. The presence of this material is well documented both historically and scientifically. The extent of the wood waste is immense and the toxic nature of the continuous break down of this material in this environment is conclusively established, as exhibited in several of the attachments to this document [*the attachments are not included with this Responsiveness Summary*]. The level of threat to both public health and environmental safety represented by this material is well established by documented onsite testing, Washington State regulations and Shoreline Hearings Board case law decisions, examples of which are also included in attachments to this document.

In our original appeal of the clean water permit for this site in 1995 we addressed this as our primary concern. We do not find that the DOE has ever addressed the problem, nor does the current draft of the consent decree adequately address monitoring or site cleanup responsibilities of the Port of Anacortes or the DOE, even though the Model Toxics Control Act constrains the DOE to protect public health and the environment from the obvious threat this wood waste represents.

Please acknowledge this as our official request for revision of the draft consent decree that will incorporate a long term monitoring and cleanup plan for the woodwaste as a primary concern of the DOE and the Port of Anacortes. As previously stated the hydrogen sulfide emissions and the anoxia of the benthic zone are the primary and obvious problems on this site. We only wish to have what is known to be a long term pollution problem dealt with in an effective manner, as required by law.

In Africa every year predators kill a number of victims and are therefor feared and respected as a threat, and accordingly are excluded from casual contact with humans, whenever possible. Curiously though, nearly ten times as many victims are killed by elephants alone, primarily because of the extensive contact between rural farmers and wild elephants and because the elephants are perceived as an inconvenience rather than a threat. We hope this tenuous analogy would illustrate to the DOE what Evergreen Islands Inc. has as a concern over the current Draft Consent Decree. Please develop a consent decree that does not diligently search for predators while ignoring the elephants in the garden. We know that the

wood waste presents a long term extensive problem; the DOE has acknowledged as much on several occasions. We are only asking for the protection of the public health and the environment required of your agency by law, no matter how inconvenient. We will look forward to further review of such revisions by the DOE to the draft consent decree which do address our concerns, but failure to address this problem in any final consent decree would be unacceptable.”

*Response: See Responses to 1.a., 1.b., and 6.f.*

### **Sandy Will**

- 8.a. **Future use/development:** “I feel the best use for this land, after it is cleaned up is use as recreational area for private citizens of Anacortes. We do not have very much area by the waterfront for recreational use. Think of the beauty of that area being preserved naturally with some picnic area, trail or place for small boats (non-motorized) to launch there.

I know the incentive is for increased revenue to the city for another soft company to build their dream job site as we have seen with Sun Systems [*Shared Healthcare Systems, Inc.*] near [*the*] memorial. But it only makes money for the group that leases/sells the land. These companies import their employees—I see no financial or benefit for the people who live here and pay taxes. I’m opposed. Keep it natural. Keep it simple.”

*Response: Ecology does not determine land use for properties, except under the provisions of MTCA to restrict use as necessary to protect human health and the environment.*